

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4825 of 1998

with

SPECIAL CIVIL APPLICATION No 4827 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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VASANTLAL TULSIDAS AGRAWAL

Versus

RESUMESIONER OF INCOMETAX [N  
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Appearance:

1. Special Civil Application No. 4825 of 1998  
MR JP SHAH for Petitioner  
MR BB NAIK FOR MR MANISH R BHATT for Respondent No. 1
2. Special Civil ApplicationNo 4827 of 1998  
MR JP SHAH for Petitioner  
MR BB NAIK FOR MR.MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL and

Date of decision: 05/10/1999

ORAL JUDGEMENT(Per: Patel-J)

#. Both these petitions are raising a common question and admitted facts being common are disposed of by this common judgment.

#. The facts narrated in Spl.C.A.No. 4825 of 1998 ,are exactly similar in other petition viz. Spl.C.A.No.4827 of 1998. They are as under:

Voluntary Disclosure of Income Scheme 1997 (VDIS for short) was made operative and it was to remain in force till 31.12.1997. For seeking the benefit under the Scheme, one was required to tender a form as prescribed under sub section 1 of section 65 of the Finance Act 1997, copy of which is produced at exh A/1. In clause 5 of the said form, the assessee was required to disclose the amount of income declared in figures and words. He was also required to disclose the assessment year to which the income relates. In clause 6, the total amount of voluntarily declared income was required to be mentioned; while in clause 7, the tax payable thereon was required to be mentioned calculated at the rate of 30 percent in the case of other than companies and firms. Again in clause 9, balance tax payable was required to be mentioned. This would apply in a case, if the tax is paid as mentioned in clause 8. In the instant case, the petitioner submitted a form disclosing Rs. 5,00,000/- as an amount of income declared under the Scheme. In the form so far as the tax payable thereon is concerned, it was specifically stated that Rs. 1,50,000/- is the tax payable at the rate of 30 percent on the sum of Rs. 5,00,000/- as the total voluntarily disclosed income. In clause No. 9, an amount of Rs. 1,50,000/- is shown. It appears that by mistake the petitioner deposited a Sum of Rs. 5,00,000/lacs. Interestingly, the receipt issued by CIT, Surat is produced at Annexure.B which is dated 29.1.1998, also clearly indicates that the petitioner declared a sum of Rs. 5,00,000/- as the amount of income for A.Y. 1988-89 to 1997-98. In clause 6, the tax payable on the income declared has been specifically mentioned as Rs. 1,50,000/-. Against clause 7, the amount of tax paid , it is mentioned as Rs. 5,00,000/-. The petitioner, realising that he has committed a mistake in making over payment, he immediately addressed a letter Exh.C to the Commissioner of Income-tax, Surat on 2.1.1998 pointing out the relevant clauses of the Scheme and stating that he has paid an excess amount of

Rs.3,50,000/- and therefore, the same should be refunded. On behalf of CIT, Surat, a letter was written to the petitioner on 25.3.1998 informing that the request of the petitioner cannot be accepted as the language of the Scheme does not envisage to allow refund of any tax in pursuance of the declaration made under the Scheme. By writing these four lines letter the authorities rejected the application of the petitioner.

#. Mr. Shah learned counsel appearing for the petitioner submitted that the petitioner under a mistake made the payment of Rs. 5,00,000/- instead of Rs. 1,50,000/-. Exh.,A/1 filled in by the petitioner clearly indicates that the amount of income declared by the petitioner was Rs. 5,00,000/- and tax to be paid thereon was Rs. 1,50,000/-. Even exh. B the receipt clearly reveals the said aspect. According to him under a bonafide belief a sum of Rs.. 5,00,000/- was paid. But it does not mean that the revenue can come out with a version that the amount is not refundable in view of section 70 of the scheme. He submitted that apart from the Scheme, whenever there is a bonafide mistake, the respondent department is required to take a corrective measure so that the mistake is corrected and a citizen is not required to suffer.

#. It appears that in the instant case, the petitioner by mistake paid a sum of Rs. 5,00,000/- and the officer has also accepted the same. It was specifically mentioned that the tax payable on the income declared is Rs. 1,50,000/-. However, it appears that in the proximity of the closure of the Scheme whatever amount was tendered has been accepted by the respondent department. If the amount would not have been paid by the declarant, then in view of clause 67 the declarant would be liable to pay simple interest at the rate of 2 percent every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such taxes. Thus if there is delayed payment, the declarant was required to pay 24 percent interest on the said amount.

#. On behalf of the revenue reliance was placed on clause 70 while writing a letter to the petitioner. For the purpose of convenience we reproduce hereunder clause 70 and clause 64 (a)(b) and (c) which are as under:

"70. Any amount of tax paid in pursuance of a declaration made under subsection (1) of section

64 shall not be refundable under any circumstances. "

"64(1) Subject to the provisions of this Scheme, where any person makes, on or after the date of commencement of this Scheme but on or before the 31st day of December 1997, a declaration in accordance with the provisions of section 65 in respect of any income chargeable to tax under the Income-tax Act for any assessment year-

(a) xxxxxxxxx

(b) xxxxxxxxx

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all materials facts necessary for his assessment or otherwise, then , notwithstanding anything contained in the Income-tax Act or in any Finance Act, income-tax shall be charged in respect of the income so declared (such income being hereinafter referred to as the voluntarily disclosed income) at the rates specified hereunder, namely:-

(i)....

(ii) in the case of a declarant, being a person other than a company or a firm, at the rate of 30 percent of the voluntarily disclosed income."

Thus on reading clause 70 it appears that it must be read with clause (64)(i)(cc) (ii). Reading the clause it appears that income-tax is to be charged at the rate of 30 percent in the instant case and reading clause 70, it appears that the amount of tax paid in pursuance of the declaration made under sub clause (1) of clause 64 is not refundable. Thus in the instant case, if an application was made for refund of the tax which was paid at the rate of 30% of the disclosed income, the revenue may be justified in invoking clause 70. Clause 70 refers to an amount of tax which is paid in pursuance of a declaration made. Clause 70 cannot be invoked when there is a question of refund of amount other than the tax. The declarant never claimed that the amount of Rs. 1,50,000/- which he was required to pay as tax or any part thereof be refunded to him. What he requested was that whatever excess amount he has paid over and above

1,50,000/should be refunded to him. It appears that the revenue has withheld the amount by wrongly interpreting clause 70. Mr. Shah learned counsel drew our attention to a decision reported in 130 ITR 443 (Bharatiya Eng. Co.P.Ltd. vs. R.G.Deshpande, Addl.C.I.T & ors.) Mr. Shah has requested to rely upon the said decision not only for the purpose for claiming refund but for the purpose of requesting the court to see that the amount of interest is also awarded.

#. It appears that initially when the amount of Rs. 5,00,000/- was tendered it can be said that it was the duty of the officer not to accept the said amount. When the scheme was likely to be closed, every one was in hurry and the petitioner under a bonafide mistake made the payment. However, when the attention was drawn, it was necessary for the CIT, Surat to refund the amount. It was his moral obligation when a request was made to refund the excess amount. Even a prima-facie reading of the return and the receipt, one would know that the petitioner has disclosed Rs. 5,00,000/- as an amount of income on which he was required to pay 30 percent of tax. We are of the view that the petitioner has been denied his legitimate claim and therefore, the amount of Rs. 3,50,000/- should be refunded to the petitioner together with 15 percent interest thereon. It is directed that the amount of refund together with interest shall be paid within a period of two months from the date of receipt of this order, failing which the department shall pay 24 percent interest on the refund amount. The interest will be paid from 2.1.1998, on which date the petitioner has claimed for the refund of the amount. Rule is made absolute in both the matters. No order as to costs.

Copy of this judgment may be kept in other matter also.

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